

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #4	CCRB Case #: 201707897	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/14/2017 1:00 PM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 3/14/2019	EO SOL 3/14/2019	
Date/Time CV Reported Thu, 09/14/2017 6:20 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/22/2017 4:43 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. DI Ernest Morales	00000	898114	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Officers			
2. POM Matthew Velger	10295	951385	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A. DI Ernest Morales	Discourtesy: Deputy Inspector Ernest Morales spoke discourteously to § 87(2)(b)	[REDACTED]
B. DI Ernest Morales	Abuse: Deputy Inspector Ernest Morales threatened to damage § 87(2)(b)'s property.	[REDACTED]
C. DI Ernest Morales	Force: Deputy Inspector Ernest Morales used physical force against § 87(2)(b)	[REDACTED]
D. DI Ernest Morales	Abuse: Deputy Inspector Ernest Morales entered and searched § 87(2)(b) in the Bronx.	[REDACTED]
E. DI Ernest Morales	Abuse: Deputy Inspector Ernest Morales detained § 87(2)(b) and § 87(2)(b)	[REDACTED]
F. DI Ernest Morales	Discourtesy: Deputy Inspector Ernest Morales spoke discourteously to § 87(2)(b)	[REDACTED]
G. An officer	Abuse: An officer entered § 87(2)(b) in the Bronx.	[REDACTED]

### Case Summary

§ 87(2)(b) filed this complaint with IAB via phone on September 14, 2017, on behalf of himself and his son, § 87(2)(b). The complaint was received at the CCRB on September 22, 2017.

On September 14, 2017, at approximately 1:00 p.m., at § 87(2)(b) in the Bronx, Deputy Inspector Ernest Morales of the 42<sup>nd</sup> Precinct allegedly used profanity toward § 87(2)(b) (**Allegation A: Discourtesy**, § 87(2)(g)). Deputy Inspector Morales threatened to break down § 87(2)(b)'s door (**Allegation B: Abuse of Authority**, § 87(2)(g)), grabbed § 87(2)(b)'s shirt and pushed and pulled him (**Allegation C: Force**, § 87(2)(g)), entered § 87(2)(b)'s apartment (**Allegation D: Abuse of Authority**, § 87(2)(g)), and detained § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)).

Deputy Inspector Morales allegedly spoke discourteously to § 87(2)(b) Jr. (**Allegation F: Discourtesy**, § 87(2)(g)). Deputy Inspector Morales detained § 87(2)(b) § 87(2)(g) (**Subsumed within Allegation E**, § 87(2)(g)).

An unidentified police officer allegedly entered § 87(2)(b), in the Bronx (**Allegation G: Abuse of Authority**, § 87(2)(g)).

No arrests or summonses resulted from this incident.

There is no video footage of this incident.

### Findings and Recommendations

**Allegation A – Discourtesy: Deputy Inspector Ernest Morales spoke discourteously to § 87(2)(b)**

**Allegation B – Abuse of Authority: Deputy Inspector Ernest Morales threatened to damage § 87(2)(b)'s property.**

**Allegation C – Force: Deputy Inspector Ernest Morales used physical force against § 87(2)(b)**

**Allegation D – Abuse of Authority: Deputy Inspector Ernest Morales entered and searched § 87(2)(b) in the Bronx.**

**Allegation E – Abuse of Authority: Deputy Inspector Ernest Morales detained § 87(2)(b) and § 87(2)(b) § 87(2)(g)**

**Allegation F – Discourtesy: Deputy Inspector Ernest Morales spoke discourteously to § 87(2)(b) § 87(2)(g)**

An attorney was consulted regarding **Allegation D** and **Allegation E**.

According to § 87(2)(b) (BR 01), he was inside of his apartment with his son, § 87(2)(b) § 87(2)(b) when approximately 10 to 15 uniformed police officers knocked on his door. § 87(2)(b) opened the door and spoke with the officers. The officers asked if he heard any noises, and § 87(2)(b) said that he had not heard anything. § 87(2)(b) then went back inside his apartment and closed the door.

Approximately 10 minutes later, Deputy Inspector Morales arrived on the scene, stood outside § 87(2)(b)'s apartment with approximately 10 additional officers, and knocked on § 87(2)(b)'s apartment door. § 87(2)(b) opened the door, stepped into the hallway, and closed the door behind him. Deputy Inspector Morales explained that there was a shooting in the building and asked if he could enter the apartment for “safety reasons.” § 87(2)(b) agreed to allow officers to enter his apartment but stated that he wanted to clean his apartment first. Deputy Inspector Morales agreed to allow § 87(2)(b) five minutes to clean the apartment.

§ 87(2)(b) entered the apartment and closed the door behind him. § 87(2)(b) was inside his apartment for approximately 30 seconds when Deputy Inspector Morales repeatedly knocked on the door and said that § 87(2)(b)'s allotted five minutes to clean the apartment had expired.

§ 87(2)(b) walked back to the front door, called his wife, § 87(2)(b), and told her that officers were trying to enter the apartment. Deputy Inspector Morales then allegedly said, "You have 30 seconds to open the door. If not, I'm going to break the door." § 87(2)(b) opened the door halfway and stood in the gap in the door, using his right arm to hold the door open. § 87(2)(b) asked what Deputy Inspector Morales was doing, and Deputy Inspector Morales allegedly said, "Fuck that. I don't give a fuck. I'm going in."

Deputy Inspector Morales then moved forward into the apartment, making contact with § 87(2)(b)'s arm and body. § 87(2)(b)'s dog, a medium-sized Yorkie terrier, barked at Deputy Inspector Morales as he made contact with § 87(2)(b). According to § 87(2)(b), Deputy Inspector Morales appeared to be surprised by the barking dog and fell backward into the hallway while holding onto § 87(2)(b)'s shirt. § 87(2)(b) believed that the resulting momentum caused Deputy Inspector Morales to pull § 87(2)(b) to the ground in the hallway by his shirt.

The officers in the hallway helped Deputy Inspector Morales to his feet. They then placed § 87(2)(b) in handcuffs. Two uniformed officers escorted § 87(2)(b) downstairs and placed him in a police vehicle. § 87(2)(b) waited in the car for approximately fifteen minutes, at which time Deputy Inspector Morales came to the car, released him from the handcuffs, and allowed him to go free without arresting him or issuing him a summons.

§ 87(2)(b) § 87(2)(b) (BR 02) could not see what caused § 87(2)(b) to fall to the ground outside of the apartment because he was positioned at the end of a long hallway across from the front door, and he could not hear what Deputy Inspector Morales said to § 87(2)(b) because he was too far away.

§ 87(2)(b) § 87(2)(b) approached the apartment door and closed it while § 87(2)(b) and Deputy Inspector Morales were on the floor in the hallway. § 87(2)(b) § 87(2)(b) screamed through the closed door, telling the officers that neither he nor his father were criminals. Deputy Inspector Morales allegedly said, "I don't care. I don't give a fuck. The easy way or the hard way, we're coming into your house."

Officers from the Emergency Services Unit responded to the scene to enter the apartment. As the ESU officers prepared to make entry, § 87(2)(b) § 87(2)(b) exited the apartment of his own accord, at which time officers placed § 87(2)(b) § 87(2)(b) in handcuffs. § 87(2)(b) § 87(2)(b) remained in handcuffs while officers entered and searched his apartment for approximately 20 minutes. The officers then released § 87(2)(b) § 87(2)(b) and allowed him to go free without arresting or summoning him.

§ 87(2)(b) § 87(2)(b)'s friend, § 87(2)(b) (BR 19), approached the scene when the ESU officers arrived. § 87(2)(b) § 87(2)(b) saw § 87(2)(b) § 87(2)(b) exit the apartment and saw the officers handcuff him. § 87(2)(b) did not hear anything that any officer said to § 87(2)(b) § 87(2)(b), and he did not witness any of the other allegations.

According to Deputy Inspector Morales (BR 13), he was at the 42<sup>nd</sup> Precinct stationhouse when he overheard a radio call reporting that there was a confirmed male shot at § 87(2)(b) § 87(2)(b) in the Bronx. Deputy Inspector Morales immediately responded to the scene, at which time he observed police officers setting up a crime scene outside of the five-story apartment building. Deputy Inspector Morales walked to the lobby of the building and asked the officers

what happened. The officers, whose names Deputy Inspector Morales could not recall, said that there was a confirmed male shot, that they did not know where the shooter was, and that they were canvassing the building.

Deputy Inspector Morales observed a trail of blood droplets on the floor of the lobby leading to a staircase that ascended to each of the five floors of the apartment complex. Deputy Inspector Morales followed the trail of blood up to the fifth floor. On each floor, the stairs connected to an open landing leading to a hallway lined with apartments. Deputy Inspector Morales observed that the blood droplets were splattered on the landings of each floor but continuously led up the stairs to the fifth floor landing.

When Deputy Inspector Morales reached the fifth floor, he observed the trail of blood lead to an area of the fifth floor hallway between § 87(2)(b)'s apartment door and a flight of stairs leading to the roof. Deputy Inspector Morales observed a smear of blood approximately four inches long on the wall at the end of the blood trail. The blood trail stopped at the wall and did not continue onto the roof.

Deputy Inspector Morales smelled gunpowder in the air immediately upon reaching the fifth floor, and he identified that smell based on his experience responding to hundreds of shootings over his 27 year career as police officer.

Ten to fifteen officers in uniform and plainclothes also stood in the hallway near § 87(2)(b)'s apartment, but Deputy Inspector Morales only recalled one of those officers' names: PO Velger.

Deputy Inspector Morales asked PO Velger what was going on. PO Velger said that he previously knocked on the door of § 87(2)(b)'s apartment and asked § 87(2)(b) if the officers could search his apartment for safety reasons. § 87(2)(b) slammed the door shut in response to that question. PO Velger told Deputy Inspector Morales that he smelled a strong odor of gunpowder emanating from § 87(2)(b)'s apartment when § 87(2)(b) first opened the door. Deputy Inspector Morales could not independently confirm that the smell of gunpowder in the hallway originated from § 87(2)(b)'s apartment given that he smelled gunpowder throughout the hallway.

Deputy Inspector Morales knocked on § 87(2)(b)'s door. § 87(2)(b) answered the door, and Deputy Inspector Morales explained that there had been a shooting and that a trail of blood led to § 87(2)(b)'s apartment door. Deputy Inspector Morales asked § 87(2)(b) for his consent to search the apartment for the shooter and any additional victims of the shooting. § 87(2)(b) asked Deputy Inspector Morales to wait five minutes, and Deputy Inspector Morales agreed to do so.

After five minutes, Deputy Inspector Morales knocked on the door again. § 87(2)(b) opened the door and told Deputy Inspector Morales that he did not have to let the officers into his apartment. Deputy Inspector Morales told § 87(2)(b) that he was not required to consent to the search but explained that the officers still needed to enter the apartment for safety reasons due to the shooting. § 87(2)(b) did not respond and shut his apartment door.

Deputy Inspector Morales waited in the hallway for an additional five minutes after which he knocked on the door for a third time. Deputy Inspector Morales made the decision at that time that the officers needed to enter § 87(2)(b)'s apartment even if he did not consent to the search. Deputy Inspector Morales believed that it was "absolutely necessary" to enter the apartment for safety reasons to ensure that the shooter was not hiding inside and that no one was injured. Deputy Inspector Morales believed that the shooter and/or additional victims might be inside due to the trail of blood leading to the door and due to the smell of gunpowder in the

hallway. Deputy Inspector Morales' suspicion of § 87(2)(b) was also raised because § 87(2)(b) was increasingly uncooperative with the officers and only opened the door halfway when speaking to them.

Deputy Inspector Morales spoke with § 87(2)(b) through the closed door and said, "Please open the door. I need to get in." § 87(2)(b) refused to do so. Deputy Inspector Morales believed that he made a comment similar to "You have 30 seconds to open the door. If not, I'm going to break the door." Deputy Inspector Morales denied saying, "Fuck that, I don't give a fuck. I'm going in."

§ 87(2)(b) ultimately opened the door at Deputy Inspector Morales' request, and Deputy Inspector Morales again asked § 87(2)(b) to allow the officers to enter the apartment. § 87(2)(b) said, "No," and Deputy Inspector Morales then grabbed § 87(2)(b)'s hand and attempted to pull him out of the apartment.

§ 87(2)(b) wrapped his arms and legs around Deputy Inspector Morales' body as § 87(2)(b) was pulled into the hallway, causing both Deputy Inspector Morales and § 87(2)(b) to fall to the ground. § 87(2)(b) could have been arrested for obstructing governmental administration and resisting arrest for grabbing him in that manner, but Deputy Inspector Morales did not arrest § 87(2)(b) based on his discretion. Officers placed § 87(2)(b) in handcuffs and escorted him downstairs with Deputy Inspector Morales' approval. Deputy Inspector Morales wanted § 87(2)(b) to be detained and removed from the vicinity of the apartment because he needed to complete his investigation into the shooting without obstruction.

§ 87(2)(b) closed the apartment door, and Deputy Inspector Morales spoke with him through the closed door. Deputy Inspector Morales told § 87(2)(b) that the officers would forcibly enter the apartment if he did not open the door. Deputy Inspector Morales did not believe that he used profanity when speaking with § 87(2)(b) and had no recollection of doing so.

The officers put over the radio that there was a barricaded civilian at the location, prompting an automatic response by ESU officers. When the ESU officers arrived, § 87(2)(b) voluntarily exited the apartment. Officers placed § 87(2)(b) in handcuffs with Deputy Inspector Morales' approval because Deputy Inspector Morales believed that § 87(2)(b) might be associated with the shooting and needed to continue his investigation without further obstruction. The ESU officers entered and searched the apartment, did not find anything, and then exited the apartment.

Deputy Inspector Morales un-handcuffed § 87(2)(b) and explained that the officers needed to enter and search his apartment due to the shooting. Deputy Inspector Morales estimated that § 87(2)(b) was handcuffed for approximately 10 to 15 minutes, and he allowed § 87(2)(b) to go free without arresting him or issuing him a summons. Deputy Inspector Morales then walked downstairs, removed § 87(2)(b) from the police car, un-handcuffed him, explained again that the officers needed to enter his apartment due to the shooting, and then allowed § 87(2)(b) to go free without arresting him or issuing him a summons.

PO Velger (BR 14) provided a statement that was consistent with Deputy Inspector Morales' testimony regarding the circumstances that brought the officers to § 87(2)(b)'s apartment.

Prior to Deputy Inspector Morales' arrival on scene, PO Velger responded with his partner, PO Larry Jimenez of the 42<sup>nd</sup> Precinct. PO Velger went to the fifth floor of the building after following the blood trail. He saw that the blood trail led to the area of the fifth floor hallway next to § 87(2)(b)'s apartment door. He knocked on the door; § 87(2)(b) opened the door;

and he smelled the odor of gunpowder emanating from the apartment. PO Velger recognized the smell of gunpowder from his prior experience responding to between 12 and 15 shootings per year in his six and a half years working in the Bronx.

PO Velger told § 87(2)(b) that there had been a shooting and that a trail of blood led to his apartment. PO Velger asked if the officers could look inside his apartment to make sure everyone was safe. § 87(2)(b) said, “No,” and slammed the door shut.

PO Velger walked downstairs after that interaction and spoke with Deputy Inspector Morales as Deputy Inspector Morales walked up the stairs. PO Velger told Deputy Inspector Morales all of the information that he knew about the shooting and described his interactions with § 87(2)(b). PO Velger did not witness Deputy Inspector Morales’ interactions with § 87(2)(b) or § 87(2)(b) because he went downstairs.

The 911 CD (BR 03) from the incident corroborated the officers’ testimonies that there was a 911 call reporting a shooting and confirmed victim at § 87(2)(b). The Unusual Occurrence Report (BR 05) from this incident noted that there was a blood trail inside the building leading to the fifth floor. The Stop and Frisk Report (BR 06) prepared for § 87(2)(b) noted that there was a smell of gunpowder emanating from his apartment.

§ 87(2)(b)’s wife, § 87(2)(b), provided photos (BR 04) to the CCRB showing a trail of blood droplets in the hallway outside of § 87(2)(b)’s apartment door. PO Velger and Deputy Inspector Morales looked at the photos during their interviews, and they confirmed that the photos accurately depicted the trail of blood that they observed during the incident.

Officers must be courteous and respectful in their interactions with the public. Patrol Guide Procedure 203-09. (BR 07).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person or to otherwise protect life. Patrol Guide Procedure 221-01. (BR 08).

Generally, officers entering a residence to perform an arrest must possess a warrant (BR 09-11). Officers are exempted from the warrant requirement if their entry occurs during an emergency situation. The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life and property. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Mitchell 39 N.Y.2d 173 (1976) (BR 09); Brigham City v. Stuart 547 U.S. 398 (2006) (BR 10). When investigating a violent crime, an officer’s observation of a trail of blood leading to a private residence establishes a reasonable basis to believe that an emergency is at hand. People v. Rodriguez 77 A.D.3d 280 (2010) (BR 11).

A reasonable investigatory detention must be temporary and last no longer than is necessary to confirm or dispel the officer’s suspicions and methods employed should be the least intrusive reasonably possible (BR 12). People v. Robinson, 282 A.D.2d 75 (2001) (BR 12).

§ 87(2)(g), § 87(2)(b)  
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§ 87(2)(g), § 87(2)(b)  
§ 87(2)(g), § 87(2)(b)

**Allegations A and F** § 87(2)(g).

§ 87(2)(g), § 87(2)(b)  
§ 87(2)(g), § 87(2)(b)

[illegible]

**Allegation G – Abuse of Authority: An officer entered § 87(2)(b), in the Bronx.**

§ 87(2)(b) alleged that, while lying on the ground in the hallway, he observed an officer enter § 87(2)(b). § 87(2)(b) could not identify the resident of that apartment and could not describe or identify the subject officer of that allegation. § 87(2)(b) did not witness any officer enter any other apartment. § 87(2)(b)

Deputy Inspector Morales denied that any officer entered any other apartment on the fifth floor. PO Velger did not see any officer enter any apartment during the incident.

§ 87(2)(g)

Allegation G § 87(2)(g)

### **Civilian and Officer CCRB Histories**

This is § 87(2)(b) and § 87(2)(b) § 87(2)(b)'s first CCRB complaint (BR 15).

Deputy Inspector Morales has been a member of the NYPD for 27 years and has been the subject of 10 prior complaints involving 25 allegations. Deputy Inspector Morales has one prior substantiated allegation for a refusal to obtain medical treatment (case 201309714) for which he received Command Level Instructions § 87(2)(g)

## Mediation, Civil and Criminal Histories

This case was unsuitable for mediation because § 87(2)(b) filed a Notice of Claim with the City of New York in regards to this incident (BR 16). Neither § 87(2)(b) nor § 87(2)(b) has any prior criminal convictions over the past 10 years (BR 17).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date